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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRANDON SPINKS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0611-CR-679
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Carol Orbison, Judge  
Cause No. 49G17-0608-CM-155133

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**July 3, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Brandon Spinks (“Spinks”) appeals his convictions for two counts of invasion of privacy as a Class A misdemeanor, claiming that the evidence is insufficient to support a finding that he knowingly or intentionally had contact with Eboni Cole (“Cole”) in violation of his No Contact Order Upon Release from Custody on Bail or Personal Recognizance (“No Contact Order”). Concluding that the evidence is sufficient to show that Spinks knowingly and intentionally went to the residence where Cole was located and contacted Cole via telephone in violation of his No Contact Order, we affirm the judgment of the trial court.

## **Facts and Procedural History**

Spinks and Cole maintained an on-again, off-again relationship for a number of years. On August 1, 2006, Spinks was arrested and charged with domestic battery as a Class A misdemeanor for an assault on Cole. On August 2, 2006, Spinks was placed on GPS monitoring and was issued a No Contact Order, as a condition of pretrial release. Spinks’s No Contact Order ordered him to have no contact with Cole “in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly, except through an attorney of record, while on probation.” Appellant’s App. p. 34. The No Contact Order also required that Spinks not visit “wherever [he] knows [Cole] to be located.” *Id.* Spinks received the No Contact Order in open court.

On August 17, 2006, Spinks went to Cole’s sister’s, Erica Battle’s (“Battle”), apartment, and attempted to speak with Cole, who was residing with Battle at the time. Battle observed Cole running towards her apartment door in an attempt to hide after

spotting Spinks nearby. After Cole ran into the apartment, Battle remained outside and seconds later Spinks approached Battle's apartment. Spinks stood outside the front of Battle's apartment and told Battle to ask Cole to come outside of the house to speak with him. Battle told Spinks to leave the property, as he was not supposed to be there. Spinks did not leave. Battle then went into the apartment to inform Cole that Spinks wanted to speak with her. As Battle entered the apartment to speak with Cole, Spinks remained outside and proceeded to walk from the front door of the apartment to the back door while attempting to peek in through the apartment windows. Cole never went outside to speak with Spinks. Spinks eventually left the apartment and began to repeatedly call Battle's apartment (over twenty times), asking to speak with Cole. On one of the many occasions that day that Spinks called and Battle answered, Cole grabbed the phone from Battle and told Spinks that she did not want to speak with him and to stop calling.

On August 18, 2006, Spinks was arrested and ultimately charged with two counts of Invasion of Privacy as Class A misdemeanors.<sup>1</sup> At Spinks's bench trial, Battle testified to the facts above. In addition to the testimony of Battle, the State introduced evidence from Spinks's GPS monitoring device, which placed him at Battle's apartment for approximately twenty minutes on August 17, 2006. Cole denied seeing, speaking, or having any contact with Spinks on the day in question. After the evidence was concluded, the trial court entered a finding of guilty on both counts of invasion of privacy and sentenced Spinks to consecutive sentences of 365 days in jail with credit time for 120 days. Spinks now appeals.

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<sup>1</sup> Ind. Code § 35-46-1-15.1(5).

## Discussion and Decision

On appeal, Spinks argues that the evidence is insufficient to support his convictions for invasion of privacy as a Class A misdemeanor. “Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects the jury’s exclusive province to weigh conflicting evidence.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

“A person who knowingly or intentionally violates . . . a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion” commits invasion of privacy as a Class A misdemeanor. *See* Ind. Code § 35-46-1-15.1(5). Spinks contends that the evidence is insufficient to support his convictions because the State failed to prove that he knowingly or intentionally contacted Cole in violation of his No Contact Order because Cole testified that she did not see, speak, or receive any telephone calls from Spinks on the day in question. We disagree.

Spinks’s No Contact Order specifically mandates that he have no contact with Cole *by telephone* and that he is not to visit Cole “*wherever [he] knows [Cole] to be located.*” Appellant’s App. p. 34 (emphasis added). At trial, Battle testified that Spinks came over to her apartment, where he knew Cole was residing, and spoke with her via telephone. Moreover, Spinks’s GPS monitoring device placed him at Battle’s apartment

for approximately twenty minutes on the date of the incident. Although it is true that Cole's testimony that she did not see, speak, or receive any telephone calls from Spinks on the day in question contradicts the testimony of Battle, it was for the trier of fact, not us, to determine which witness to believe or disbelieve. *See Reid v. State*, 259 Ind. 166, 168, 285 N.E.2d 279, 280 (1972) (holding that "[t]he trier of fact has the right to accept any witness' testimony or to disbelieve the testimony of any witness."). The trial court, sitting as the trier of fact, heard all the evidence, apparently did not assign much credibility to Cole's testimony, and found Spinks guilty of two counts of invasion of privacy. Spinks's argument on appeal amounts to a request for us to reweigh conflicting evidence, which we will not do. Sufficient evidence exists to support the trial court's conclusion that Spinks knowingly or intentionally went to the residence where Cole was located and spoke with her via telephone in violation of his No Contact Order.<sup>2</sup>

Affirmed.

SULLIVAN, J., and ROBB, J., concur.

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<sup>2</sup> As an additional argument in support of his contention that the evidence is insufficient to support his convictions, Spinks suggests that "no evidence was presented at the bench trial that Mr. Spinks signed the Community Corrections GPS contract or that he was instructed on how the equipment worked." Appellant's Br. p. 6. However, Spinks failed to tell us why this was important. We note that Spinks was given notice of the No Contact Order in open court on August 2, 2006.